IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.4023 OF 1994

Narayan Shankar Khokale. ...Petitioner.
Vs.
State of Maharashtra & Ors. ...Respondents.
....
Mr. Chetan Agarwal i/b. Mr. V. T. Tulpule for the Petitioner.
Mr. P. I. Khemani, AGP for Respondent No.1.
Mr. R. V. More for Respondent No.2.
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CORAM : A. P. SHAH AND
DR.D.Y.CHANDRACHUD, JJ.

June 23, 2005.

P.C.:

The Petitioner was initially appointed as a Compounder by the President of the District Local Board at Nasik by a letter dated 16th July 1953 in a hospital at Zodge, in the Taluka of Malegaon, in the District of Nasik. The Petitioner joined service on 23rd July 1953 and came to be confirmed on 28th January 1957. Subsequently, with effect from 1st May 1962, the services of the Petitioner came to be governed by the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961. All the erstwhile dispensaries under the Nasik Zilla Local Board were placed under

the control of the District Health Officer of the Zilla Parishad at Nasik with effect from the said date. The Petitioner was accordingly informed by a communication dated 22nd May 1962 that he was appointed with the Zilla Parishad at Nasik. The Petitioner worked in his post thereafter from 1953 to 1967. On 4th January 1965, the Petitioner addressed a letter to the Chief Executive Officer of the Zilla Parishad stating that he wished to resign from his post for personal reasons with effect from 4th February 1965. The Petitioner accordingly sought the acceptance of his resignation. Before the date stipulated by the Petitioner in his letter dated 4th January 1965, the Petitioner addressed a letter dated 2nd February 1965 withdrawing the earlier resignation and requesting that earlier notice be treated as cancelled. On 12th March 1965, the Chief Executive Officer, informed the Petitioner that as a permanent employee, he was liable to furnish three months' notice or pay in lieu thereof failing which his resignation would not be accepted.

2. On 9th April 1966, the Petitioner applied for the post of

Ayurvedic Vaidya. On 13th December 1966, the Public Health Officer of the First Respondent wrote a letter to the Block Development Officer of the Panchayat Samiti at Malegaon regarding the application by the Petitioner for the post of Ayurvedic Vaidya. The District Health Officer requested by his letter that the willingness of the Petitioner to accept the post of Subsidised Medical Practitioner may be taken since the post of Ayurvedic Vaidya was not vacant at the relevant time. The letter stated that the Petitioner would be appointed as an Ayurvedic Vaidya as soon as a vacancy arose in future. By his letter dated 17th December 1966, the Petitioner stated that he was willing to accept the post of Subsidised Medical Practitioner subject to the condition that he would get the benefit of 13 years' of regular service that he had put in; recording that he desired to be absorbed in a regular vacancy.

3. On 10th January 1967, the Petitioner was informed that his resignation as a Compounder stood accepted from the date on which he would be relieved. The Petitioner was appointed as a Subsidised Medical Practitioner at the S. N. P. Centre, Rajapur,

Taluka Yeola by a communication 9th January 1967 on a Honorarium of Rs.120/- per month and fixed T. A. of Rs. 37.50. The Petitioner continued in service thereafter without interruption until he superannuated from service on attaining the age of 58 years. On 24th December 1987, the Petitioner applied for pension. This request was turned down on 4th February 1989 by the Second Respondent on the ground that since his resignation from service as a Compounder had been accepted, he would not be entitled to pensionary benefits. The Petitioner has averred that he filed an appeal before the Collector on 20th February 1989 against the denial of pension by the Second Respondent. On 26th April 1992, the District Health Officer informed the Assistant Commissioner (Development) that the records of the Health Department at the Zilla Parishad, Nasik were burnt as a result of a short circuit in May 1962 and since the records pertaining to the circumstances in which the resignation of the Petitioner came to be accepted are not available, no opinion could be furnished thereon. On 18th March 1990, the office of the Commissioner, Nasik Division, wrote a letter to the Secretary to the Government of Maharashtra in the

Rural Development Department opining that the acceptance of the resignation of the Petitioner was erroneous. The letter recorded that the Petitioner had initially sought the acceptance of his resignation with effect from 4th February 1965 by his letter dated 4th January 1965. The Zilla Parishad had declined to accept the resignation on 12th March 1965. The Petitioner having made an application before the Selection Committee on 9th April 1966, he was informed that he would be considered for the post of Ayurvedic Vaidya when it became vacant. The Petitioner was appointed as Subsidised Medical Practitioner with effect from 10th January 1967. The acceptance of his resignation at that stage was stated to be thus erroneous. Thereafter, the Petitioner was informed on 2nd April 1994 that his application for the grant of pension and gratuity stood dismissed under a communication dated 3rd November 1993 of the Commissioner, Nasik Division.

4. We have heard Counsel appearing on behalf of the contesting parties. On behalf of the Petitioner it has been submitted that the basis on which he has been denied pensionary

benefits is flawed. The resignation, it was urged, was withdrawn before it became effective and the Department in fact informed him that the resignation could not be accepted for want of notice or pay in lieu thereof.

5. No reply has been filed to these proceedings.

6. As the facts which have been narrated in the earlier part of this judgment would show, the Petitioner had initially purported to submit his resignation from service by a letter dated 4th January 1965, with effect from 4th February 1965. Before the resignation became effective and even before it was accepted, the Petitioner withdrew his resignation on 2nd February 1965. On 12th March 1965, the Petitioner was informed by the Chief Executive Officer, that his resignation was not being accepted since, being a permanent servant, he would have to furnish three months' notice or pay in lieu thereof. The Petitioner thereupon applied for the post of Ayurvedic Vaidya. That post was not vacant and on 13th December 1966, the District Health Officer called upon the Block

Development Officer to take the consent of the Petitioner for being appointed as a Subsidised Medical Practitioner. It was, however, stated that the Petitioner would be appointed as an Ayurvedic Vaidya as soon as a vacancy arose in future. The Petitioner accepted his posting as a Subsidised Medical Practitioner seeking at the same time the benefits of his past service of 13 years. The Petitioner was appointed as a Subsidised Medical Practitioner by an order dated 9th January 1967. The purported acceptance of his resignation on 10th January 1967 is clearly and patently unlawful and must be disregarded. For one thing, the Petitioner had prior to the acceptance of his resignation, withdrawn his letter by his communication dated 2nd February 1965. Moreover, the matter was placed beyond doubt by the communication of 12th March 1965 of the Chief Executive Officer, rejecting the resignation. That being the position, there was no occasion on 10th January 1967 for the Chief Executive Officer, to accept the letter of resignation which had already been withdrawn and which in any event had been rejected.

7. In the circumstances, we are of the view that the denial of the pension to the Petitioner on the ground that he had resigned from service is completely arbitrary and contrary to the norms of fair treatment enunciated in Article 14 of the Constitution. Counsel appearing on behalf of the Petitioner has submitted that even though the period of his service as a Subsidised Medical Practitioner after 9th January 1967 cannot be counted towards pensionable service, there is absolutely no justification why the service which was rendered by him from 23rd July 1953 until 9th January 1967 should not be counted for the purposes of pension. Counsel appearing on behalf of the Petitioner submitted that the case of the Petitioner for the grant of pension should be reconsidered particularly in the light of the fact that the qualifying service for pension is reduced to 10 years. We find merit in the contention of the Petitioner that his case for pension should not have been rejected on the basis that he had resigned from service. For the reasons which we have already noted earlier, it is impossible to accept the contention that the Petitioner had resigned from service. The reason which weighed with the

authorities in declining to grant pension must therefore, be disregarded. This petition accordingly stands disposed of by directing the Respondents to reconsider the case of the Petitioner for the grant of pension in an appropriate category in accordance with law under the Maharashtra Civil Service (Pension) Rules, 1982. The case of the Petitioner shall be considered afresh and a decision shall be arrived at in the light of the observations contained hereinabove within a period of two months from today. In the event that the Petitioner is held to be eligible for receiving pensionary benefits, the arrears that are due, in accordance with law, shall be paid within a period of three months thereafter together with interest computed at the rate of 9% per annum.

8. The petition is accordingly disposed of. There shall be no order as to costs.

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